IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

MACA.No. 75 of 2003(C)

OPMV.45/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT (CLAIMANT IN THE CLAIM PETITION):
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1. MR.DEVASSIA, S/O. DEVASSIA,
EEZHEKUNNEL HOUSE, CALVARYMOUND P.O.,
THANKAMONY VILLAGE, UDUMBANCHOLA TALUK.

2. ALEYAMMA, W/O. DEVASSIA,
-DO- -DO-.

3. SINI, D/O. DEVASSIA,
-DO- -DO-.

BY ADV. SRI.JIJO THOMAS

RESPONDENTS: (ADDL.RESPONDENTS 3 & 4 IN THE CLAIM PETITION):
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1. MR.K.G.DIVAKARAN, S/O.GOVINDAN,
KATHIVETTATHU HOUSE, VALLAKADAVU KARA,
KATTAPPANA VILLAGE.

2. THE NEW INDIA INSURANCE CO. LTD.,
KATTAPPANA, IDUKKI DISTRICT.

BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. Raman & Antony Dominic, JJ.
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M.A.C.A.No.75 of 2003
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Dated this the 20th day of March, 2007.

JUDGMENT

Antony Dominic,J.

Claimants in O.P.(M.V.) No.45 of 1998 on the file of the Motor Accidents Claims Tribunal, Thodupuzha are the appellants. The claim was filed by the legal representatives of deceased Sibi, who died in an accident involving a motor cycle which he was riding. The legal representatives had claimed a total compensation of Rs.4,44,000/-. By the impugned award, the Tribunal held that the claim having been filed under Section 163A of the Motor Vehicles Act, it was not maintainable in as much as the death was on account of the negligence of the deceased himself. According to the Tribunal, such cases are not covered by Section 163A of the Motor Vehicles Act. Proceeding further, the Tribunal had also applied the structural formula as available and clarified that if the compensation was payable, the same would have been Rs.2,08,500/-. It is aggrieved by the denial of compensation and seeking enhancement, that this appeal is filed.

2. As regards the question whether the appellants are entitled to sustain a claim under Section 163A of the M.V. Act, this issue is covered by a Full Bench decision of this Court reported in **National Insurance Co. Ltd.** v. **Malathi C. Salian** 2003 (3) K.L.T. 460 where it has been held that the Insurance Company cannot defeat a claim under Section 163A of the M.V. Act on the ground that the death or disablement had occurred due to the wrongful act, neglect or default on the part of the deceased or the disabled person. In view of the law as laid down by the Full Bench of this Court, we hold that the appellants are entitled to claim compensation in terms of the provisions contained in Section 163A of the M.V. Act.

3. As regards the claim for enhancement is concerned, we notice that though it was stated that the deceased was a company employee, there is no evidence produced to prove the alleged monthly salary of Rs.3,000/-. It is in that circumstances that a notional income of Rs.1,500/- was fixed by the Tribunal. We see no reason to differ from the finding entered into by the Tribunal. Taking the age of the deceased as 26, the Tribunal has correctly quantified the compensation payable to the claimants. Accordingly, we hold that the appellants are not entitled to claim any enhanced compensation.

4. In the result, we hold that the appellants are entitled to a

total compensation of Rs.2,08,500/-. This amount will also carry interest at the rate of 7% per annum from the date of petition, till date of realisation.

Appeal will stand allowed.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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